

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION

In the Matter of	)	
	)	
Implementation of the	)	CC Docket No. 96-115
Telecommunications Act of 1996:	)	
	)	
Telecommunications Carriers' Use	)	
of Customer Proprietary Network	)	
Information and Other	)	
Customer Information	)	
	)	
	)	
Implementation of the Non-Accounting	)	CC Docket no. 96-149
Safeguards of Section 271 and 272 of the	)	
Communications Act of 1934, as Amended	)	

**COMMENTS OF SPRINT SPECTRUM L.P. D/B/A SPRINT PCS ON FEBRUARY  
26, 1998 FURTHER NOTICE OF PROPOSED RULEMAKING**

Sprint Spectrum L.P. d/b/a Sprint PCS ("Sprint PCS")<sup>1/</sup> hereby submits its Comments in response to the Federal Communication Commission's request for further public comment in connection with implementation of Sections 222(a) and (b) of the Telecommunications Act of 1996 (the "1996 Act"). Sprint PCS believes that the Commission should refrain from restricting a carrier's use of customer proprietary information ("CPNI") for all marketing purposes, even within the customer's total service offering. In addition, Sprint PCS does not believe that the Commission need implement

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<sup>1/</sup> Sprint Spectrum L.P. is a joint venture formed by subsidiaries of Sprint Corporation, Cox Communications, Inc., Tele-Communications, Inc. and Comcast Corporation that provides nationwide wireless services.

any additional safeguards to protect the confidentiality of carrier information than those set forth in its Second Report and Order of February 26, 1998 (the "*Order*").<sup>2</sup>

**I. The Commission Has Taken Sufficient Steps To Protect the Confidentiality of CPNI In The *Order*.**

As the Commission's Notice points out, the 1996 Act expressly imposes a duty upon carriers "to protect the confidentiality of proprietary information of, and relating to . . . customers."<sup>3</sup> While section 222(a) mandates that carriers take affirmative action to protect proprietary information, it makes no mention of the customer's affirmative right to prescribe the manner in which a carrier protects such information.<sup>4</sup> Likewise, section 222(b) speaks only to the carrier's obligations with respect to CPNI it receives from another carrier.<sup>5</sup> Section 222(b) does not even mention the word "customer" in its provision. The customer's affirmative rights and opportunities for action in affecting a carrier's use of their CPNI are contained in Section 222(c) and have been interpreted in the Commission's *Order*. To infer that either Section 222(a) or (b) impose additional rights and/or opportunities for the customer to restrict a carrier from using, disclosing, or permitting access to CPNI for all marketing purposes, even within the customer's total service offering is an over-broad interpretation that can lead to customer confusion and hinder a carrier's ability to properly service their customers. The carriers' duties to protect confidential information as set forth in section 222(a) and (b)

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<sup>2</sup> *Telecommunications Carrier's Use of Customer Proprietary Information and Other Customer Information*. Second Report and Order and Further Notice of Proposed Rulemaking. FCC 98-27 (CC Docket No. 96-115, released February 26, 1998) ("*Order*").

<sup>3</sup> *Id.* at ¶205.

<sup>4</sup> 47 U.S.C. §222(a).

<sup>5</sup> 47 U.S.C. §222(b).

have been sufficiently addressed by the Commission in the safeguard provisions announced in the *Order*.<sup>6</sup>

A. Permitting total restriction of CPNI use for marketing purposes is not supported by the language and policy of the Act.

The language and policy of Section 222(c) indicates that Congress expected carriers to use CPNI for some purposes, that is, “the provision of the service from which such information is derived, or services necessary to, or used in, the provision of such telecommunications service, including the publishing of directories.”<sup>7</sup> Had Congress intended to permit customers to forbid carriers from using CPNI for all marketing purposes, it could have drafted the statute to reflect that specific intent. Instead, Congress drafted section 222(c) to expressly allow the use of CPNI for the customer’s service offering. This specific grant must prevail over any general obligation of confidentiality that section 222(a) imposes. It is a well settled rule of statutory construction that where a specific statutory section conflicts with a general one, the specific controls.<sup>8</sup>

As noted by the Commission, CPNI is a valuable resource for carriers to utilize in “identifying potential customers and tailoring marketing strategies to

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<sup>6</sup> *Order* at ¶190 et seq.

<sup>7</sup> 47 U.S.C. §222(c)(1)(A) & (B).

<sup>8</sup> See HCSC-Laundry v. U.S., 450 U.S. 1, 6, 101 S.Ct. 836, 839 (1981) (basic principle of statutory construction states that a specific statute controls over a general provision particularly when the two are interrelated and closely positioned); Edmond v. U.S., 117 S.Ct. 1573, 137 L.Ed.2d 917 (1997); Morales v. Trans World Airlines, Inc., et al., 504 U.S. 374, 112 S.Ct. 2031, 119 L.Ed.2d 157 (1992); see also Kawaauhua v. Geiger, 118 S.Ct. 974, 977 (1998) (Supreme Court is hesitant to adopt an interpretation of congressional intent that would render another portion of the same law superfluous).

maximize customer response.”<sup>9</sup> The total service approach is intended to protect customer privacy interests, while furthering fair competition.<sup>10</sup> The proposed action would not allow carriers to utilize CPNI’s valuable resources to compete in the marketplace or to fully serve their customers.

B. The suggested action will make it more difficult for a carrier to meet a customer’s service expectations.

Under the total service approach announced in the *Order*, the Commission recognized that customers expect carriers to use CPNI to service their total telecommunications offering(s).<sup>11</sup> Particularly for companies like Sprint PCS who are new entrants to a competitive marketplace, customer service includes offering updates to existing wireless services and features in order to improve the total quality of the customer’s product. Customers selecting PCS service are likely to expect communication from the company on the availability of upgrades and additions to their current service offering. If the customers prohibit the carrier from using CPNI to market to them within their total service offering, they may unintentionally remove themselves from the list of intended recipients for this type of information contrary to their expectation.<sup>12</sup> This is the case given the FCC’s suggested bifurcation of permissible uses that potentially excludes updates to existing service and new features from acceptable forms of communication.

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<sup>9</sup> *Order* at ¶22.

<sup>10</sup> *Id.* at ¶¶31, 35

<sup>11</sup> *Id.* at ¶¶35, 54, 55.

<sup>12</sup> *Id.* at ¶54 noting that indeed, most customers of any service expect carriers to use information derived through their service relationship to improved the customer’s existing service.

Furthermore, allowing a customer to restrict a carrier's use of CPNI for all marketing purposes may have a chilling effect on the carrier's servicing efforts due to uncertainty over whether or not a particular communication is marketing or service oriented. As stated above, in the rapidly expanding wireless marketplace, PCS customers expect to be kept abreast of the latest service plans and coverage information in addition to specific feature offerings. These may include bonus plans tailored to a particular group of customers whose usage, or other factors, indicate that they would benefit from another plan or the introduction of new features and technologies. While allegedly giving ultimate control of a carrier's use of CPNI to the customer, the suggested action jeopardizes the evolving nature of the customer/carrier relationship and the evolving PCS market and technologies. In short, it conflicts with the recognized benefit derived from using CPNI to service the customer.<sup>13</sup>

The limitations on a carrier's use of CPNI and the safeguard requirements announced in the *Order* are sufficient to satisfy the legislative history and policy interest of protecting the customer's privacy while also allowing carriers to compete in the marketplace.

**II. No additional safeguards or enforcement mechanisms are required to protect the confidentiality of carrier information or ensure carrier compliance.**

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<sup>13</sup> *Id.* at ¶35; the Commission rejected the discrete offering approach in favor of the total service approach noting that the latter "affords carriers the right to use or disclose CPNI for, among other things, marketing related offerings with customers' existing service for their benefit and convenience."

The Commission noted that the total service approach is fashioned to fulfill Congressional intent that 222(c) would protect customers' reasonable expectations of privacy "regarding personal and sensitive information, by giving customers control over CPNI use both by their current carrier and third parties."<sup>14</sup> The safeguards announced in the *Order* are sufficient to preserve these privacy interests.

Specifically, the *Corporate Certification* requirement will enable the Commission to review a carrier's implementation of the CPNI rules and safeguards.<sup>15</sup> If, after reviewing the certification, the Commission has specific questions or problems with a carrier's explanation of its procedures relating to CPNI use, disclosure or access, they may address them directly to the carrier. *Access Documentation* requirements contained in the *Order* will create an audit trail of carrier access and use of customer CPNI files which may be used by a carrier to verify its compliance with the rules and safeguards.<sup>16</sup>

Finally, the Commission authorized the Chief of the Common Carrier Bureaus to undertake enforcement of the safeguards and "to the extent that carrier behavior justifies requirements beyond those outlined herein, to establish additional safeguards."<sup>17</sup> As such, the Commission has already created a mechanism through which additional safeguards may be added in the future if

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<sup>14</sup> *Id.* at ¶53.

<sup>15</sup> *Id.* at ¶201.

<sup>16</sup> *Id.* at ¶199.


<sup>17</sup> *Id.* at ¶202.

warranted. Until an assessment of the new safeguards is available, the  
Commission should not add further safeguards or enforcement measures.

Respectfully submitted.



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by  


March 30, 1998